

SPEECH BY HONOURABLE O.C GUTU, DEPTUY MINISTER FOR JUSTIE AND LEGAL AFFAIRS, ZIMBABWWE AT THE 7TH AFRICAL PROSECUTORS ASSOCIATION CONFERENCE AND ANNUAL GENERAL MEETING, HELD IN WINDHOEK, NAMIBIA FROM 08 -10 OCTOBER 2012.

THE AFRICAN UNION PRNCIPLES AND GUIDELINES ON NATIONAL PROSECUTION INDEPENDENCE

Distinguished guests,

Ladies and Gentlemen

All Protocols respectfully observed

It is indeed a great privilege and my singular honour to speak at this very important meeting. My task is to speak on the African Union Principals Guidelines on National Prosecution Independence. Let me commence by saying, a country's justice delivery system is the core for the protection and promotion of human rights. Prosecutors play a crucial role in the administration of justice and it is important that they dispense their duties without fear and favour. Therefore, it is the duty of Governments to create an environment which guarantees the independence of prosecutors in the exercise of their duties. Governments, particularly, in Africa, should refrain from irregularly and un procedurally interfering with prosecutorial independence. Politicians and other policy makers are strongly urged to respect and uphold prosecutorial independence.

The African Union Principles; and Guidelines on the right to a fair trial and legal assistance in Africa outline several factors which are crucial to the independence of prosecutors. First and foremost states are reguired to ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

Several factors come into play here. Some challenges faced at the national level are related to the way the prosecution is structured and others have to do with external factors. For most African countries the independence of prosecutors is compromised by a lack of both human and financial resources, poor remuneration and the lack of security. In Zimbabwe, we have a rather disturbing situation where members of the uniformed forces such as the Police and the army, are appointed as public prosecutors. This is a very unhealthy state of affairs because there can be no prosecutorial independence when the whole institution of prosecution is militarized. Wherever possible, all prosecutors in civilian courts should be civilians themselves.

The question of autonomy is paramount. International and regional law does not contain a provision that guarantees the institutional independence of prosecutors. This may be due to the fact that countries have different systems of prosecution. My country's Parliament recently considered a bill to establish the Attorney General's Office Board to constitute the Attorney General's Office as a service outside the Public Service and to provide for the administration of the office and conditions of service of its members. The objective is to improve efficiency and effectiveness as well as to give it greater financial autonomy. We are also in the process of drafting a new Constitution which will soon be tabled for discussion at the second all stakeholders conference provides for a National Prosecuting Authority. We have come to realize that an independent prosecutorial authority is necessary to ensure that prosecutors carry out their professional functions impartially and objectively. Though the basic roles and functions of prosecutors vary considerably among states, autonomy and independence from other branches of government is indeed a giant step toward guaranteeing the independence of prosecutors.

The African Union principles and guidelines further stipulate that appointment and promotion of prosecutors shall be based on objective factors such as professional qualifications, ability, integrity and experience. It is important, therefore, for States should to put in place safeguards against appointments based on partiality or prejudice. Nepotism was once a big problem in Africa especially in the period soon after attainment of independence of a country. I wonder if it is still a problem. Selection and promotion should be transparent. Ladies and gentlemen, this speech cannot be complete if I fail to raise the issue of corruption in the justice delivery system. The sad reality is that most justice delivery systems in Africa are ravaged by the scourge of corruption. Corruption is a cancer that is threatening to tear to shreds, the whole fabric of society; including but not limited to the justice delivery system. Prosecutors should exercise the highest standard of independence and impartiality. professionalism and integrity. Put simply, Prosecutors should shun corruption in all its manner of manifestation.

The African Union guidelines encourage States to ensure reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, housing, transport, conditions of physical and social security, pension and age of retirement and other conditions of service be set out by law or published rules or regulations. Let me hasten to say that in most African countries remuneration commensurate with the crucial role played by Prosecutors could go a long way in combating corruption in our justice delivery systems. Equally, security of tenure also reinforces your independence and impartiality.

I have also observed that the transfer system can be manipulated therefore safeguards must also be put in place to make sure the transfer

system is not used to punish or reward prosecutors for favours denied or granted.

On equal importance is the issue of instructions. The Human Rights Council Special Rapporteur advises that prosecutors should have the right to request that instructions be issued in writing. Reference can be made to the International Association of Prosecutors (IAP) standards of professional responsibility which stress that “the issue of instruction by non-prosecutorial authorities should be transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence”. Sometimes Prosecutors are faced with situations in which unlawful orders are issued or orders which are unethical.

Even when dealing with sensitive cases prosecutors should be protected from violence or any form of intimidation. Particularly in countries where there is political instabilities Prosecutors may be intimidated when handling politically sensitive matters. In addition to this, cases the administration system should ensure that cases are assigned basing on the qualifications and areas of expertise. A politicized prosecution department is a major threat to the rule of law. Finally, an oversight mechanism perhaps in the form of audits or some reporting structure is important to ensure transparency and accountability just to strike a balance.

In conclusion may I encourage the APA, as the norm setting body to come up with a model that can be used as a yard stick at the national level. It is also important to convene workshops to encourage implementation of the principle and guidelines and adherence to regional and international commitments under the various human rights instruments.

